

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT WINCHESTER

GENE NIXON,)

Plaintiff)

v.)

No. 4:05-cv-38

ATLANTIC UNITED CONSTRUCTION,)
INC.,)

Defendant)

MEMORANDUM AND ORDER

This is a breach of contract action removed to this court from the Chancery Court of Grundy County, Tennessee. Plaintiff Gene Nixon alleges that the defendant Atlantic United Construction, Inc., breached a contract wherein defendant agreed to design and construct for plaintiff a 50-room motel located in Monteagle, Tennessee. Currently pending is defendant's motion to dismiss plaintiff's claim or, in the alternative, to stay and compel arbitration [Court File #4]. Plaintiff has failed to respond to the pending motion and is therefore deemed to have waived any response. Rule 7.2, Local Rules for the United States District Court for the Eastern District of Tennessee.

The main body of the contract contains the following provisions:

If the dispute cannot be settled by mediation within sixty (60) days, the parties shall submit the dispute to any dispute resolution process set forth in Exhibit 1 of this Agreement.

Exhibit 1 to that Agreement, entitled "Dispute Resolution Menu," contains several selections for procedures to be used to resolve disputes, and the parties agreed that the "procedures can be used singularly, or progressively, as agreed to by the parties." The parties marked a number of selections, including "dispute review board," "advisory arbitration advisory," "mini trial," "binding arbitration," and "litigation." The selections were made in that order.

The paragraph entitled "binding arbitration" provides:

Binding Arbitration. Binding Arbitration shall be pursuant to the Construction Industry Rules of the American Arbitration Association unless the parties mutually agree otherwise. A written demand for arbitration shall be filed with the American Arbitration Association and the other parties to the Agreement within a reasonable time after the dispute or claim has arisen, but in no event after the applicable statute of limitations for a legal or equitable proceeding would have run. The location of the arbitration proceedings shall be at the office of the American Arbitration Association nearest the Project, unless the parties agree otherwise. The arbitration award shall be final. Notwithstanding Paragraph 14.2, this agreement to arbitrate shall be governed by the Federal Arbitration Act and judgment upon the award may be confirmed in any court having jurisdiction.

Thus, the parties have agreed that either party may demand binding arbitration and defendant has demanded that arbitration. Plaintiff signed the contract containing the arbitration provision and is bound by that contract to bring any claims he might have in arbitration.

Accordingly, this action is hereby DISMISSED and plaintiff is DIRECTED to arbitrate his claim in the appropriate forum. The court is aware of no reason to stay this case pending that arbitration. Accordingly, defendant's motion to dismiss plaintiff's complaint or to compel arbitration [Court File #4] is hereby GRANTED and this action is hereby DISMISSED.

ENTER:


UNITED STATES DISTRICT JUDGE